

REMARKS

This responds to the Final Office Action mailed on May 29, 2009.

Claim 16 is amended, no claims are canceled, and no claims are added; as a result, claims 1-7, 9, 16-25, and 27-34 are now pending in this application.

Double Patenting Rejection

Claims 1-7, 9, 16-25 and 27-34 were provisionally rejected under a non-statutory obviousness-type double patenting rejection, specifically over claims 1-33 of co-pending Application no. 11/241,008. Applicant does not admit that the claims are obvious in view of co-pending Application No. 11/241,008. However, a Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(b)(iv) is enclosed herewith to obviate these rejections.

§ 101 Rejection of the Claims

Claims 16-25 and 27-29 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Office Action asserts that claims 16-25 and 27-29 are non-statutory because the claims allegedly are not tied to another statutory class of invention (such as a particular apparatus) nor physically transform underlying subject matter (such as an article or materials) to a different state or thing. As recently determined by the Court of Appeals for the Federal Circuit (CAFC), claims to computer implemented methods do not need to explicitly recite a physical transformation nor a concrete or tangible result¹. Rather, the subject matter patentability of claims to computer implemented methods is determined by the Bilski machine-or-transformation test. “The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies §101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. Bilski citing Benson, 409 U.S. at 70. It is enough for subject matter patentability that the claimed invention is tied to a particular machine, or the claim transforms an article. Such a tying to a particular machine is clearly present in the claims as currently presented. In particular, in the method as claimed in

¹ In Re Bernard L. Bilski et al., 545 F.3rd 943, 88 USPQ2d 1385 (Fed.Cir. 2008); State St. Bank and Trust Co. v. Signature Fin. Group, Inc., 149 F.3d 1368 (Fed. Cir. 1999); Ex Parte Lundgren, F.3d, 2004, WL 3561262 (Fed. Cir. 2004); Diamond v. Diehr, 450 U.S. 175 (1981), Diamond v. Chakrabarty, 447 U.S. 303 (1980).

claim 16, the computer-implemented method includes receiving a request to cancel feedback pertaining to the transaction in a network-based transaction facility from a first party to the transaction, the request being received via a digital network interface for processing by a data processor; and using the data processor to automatically determine whether one or more feedback cancellation criteria are satisfied. Thus, the method claimed in claim 16, and its dependent claims (17-25 and 27-29) is clearly tied to a particular machine (i.e., a data processor with a digital network interface in a network-based transaction facility). As such, the claims as presently presented are statutory under 35 U.S.C. §101. The Applicants therefore respectfully request withdrawal of the §101 rejections.

Allowable Subject Matter

Claims 1-7, 9, 16-25 and 27-34 were indicated to be allowable if rewritten to overcome the Double Patenting rejection and the rejection of claims 30-34 under 37 U.S.C. § 101, set forth in the Office Action. The Applicant assumes also that claims 1-7, 9, 16-25 and 27-34 would be allowable if rewritten to overcome the rejection of claims 16-25 and 27-29 under 37 U.S.C. § 101, set forth in the Office Action. As suggested in the Office Action, the rejection of claims 30-34 under 37 U.S.C. § 101 has been overcome in view of the Applicants' previous amendment to the specification. The rejection of claims 16-25 and 27-29 under 37 U.S.C. § 101 has been overcome in view of the claim amendments and arguments presented herein. Finally, the Double Patenting rejection has been overcome in view of the Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(b)(iv) enclosed herewith. As such, all objections and rejections have been overcome. The Applicants respectfully request withdrawal of any outstanding rejections and allowance of the pending claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 406-4855 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 31 August 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 31st day of August, 2009.

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